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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOYCE M. RANKINE, an individual;
and LAWRENCE S. STANTON, an
individual,

Plaintiffs,

v.

ROLLER BEARING COMPANY OF
AMERICA, INC., a Delaware
corporation; and DOES 1 through 10,
inclusive,

Defendants.

) Case No. 3:12-cv-02065-IEG-BLM
)
)) DEFENDANT ROLLER BEARING
)) COMPANY OF AMERICA, INC.'S
)) NOTICE OF MOTION AND
)) MOTION TO QUASH, OR IN THE
)) ALTERNATIVE, FOR AN ORDER
)) MODIFYING SUBPOENA; AND
)) MEMORANDUM OF POINTS AND
)) AUTHORITIES
))
)) [Declaration of Annie Ventocilla, Esq.
)) and [Proposed] Order filed concurrently
)) herewith]
))
)) Complaint filed: July 20, 2012
)) Trial date: None set.
))
))
))

1 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF**
2 **RECORD HEREIN:**

3 PLEASE TAKE NOTICE that at _____ a.m. on _____, 2013, on the 11th
4 floor, before US Magistrate Judge Barbara L. Major, of the United States District
5 Court Southern District of California located at 333 West Broadway, San Diego, CA
6 92101, San Diego, California, Defendant ROLLER BEARING COMPANY OF
7 AMERICA, INC. ("RBC") will and hereby does move for an Order pursuant to
8 Federal Rules of Civil Procedure 45 to quash Plaintiffs' Subpoena to Produce
9 Documents, Information, or Objects, or to Permit Inspection of Premises in a Civil
10 Action served on The Boeing Company ("Boeing") on or about July 2, 2013.

11 This motion is being made on the ground that the subpoena is overbroad and
12 unduly burdensome on Boeing and Defendants. Moreover, Defendants move for an
13 Order for sanctions against Plaintiffs' for the cost of bringing this motion.

14 This motion is based upon this Notice, the accompanying Memorandum of
15 Points and Authorities, the concurrently filed Declaration of Annie Ventocilla, and
16 upon such other oral and documentary evidence as the court may consider at the time
17 of the ruling on the application. This motion is made following the conferences of
18 counsel pursuant to L.R. 26.1(a), which took place on June 26, 2013 and July 2,
19 2013.

20
21 Dated: July 3, 2013

BOHM MATSEN, LLP

24 By: /s/ Annie Ventocilla

25 James G. Bohm

26 Annie Ventocilla

27 Nathan P. Bettenhausen

28 Attorneys for Defendant

 ROLLER BEARING COMPANY OF
 AMERICA, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant RBC seeks an order quashing the subpoena to produce documents served on The Boeing Company (“Boeing”) on or about June 13, 2013 – which was withdrawn and later reissued on July 2, 2013. Though Plaintiffs made minor modifications to the subpoena only two days before the production date in an attempt to avoid this motion, the subpoena remains overbroad and unduly burdensome.

RBC brings this motion pursuant to Federal Rule of Civil Procedure 45, on the grounds that the subpoena is unduly burdensome, overbroad and seeks privileged documents that are well beyond the scope of the claims in the operative Complaint and Counterclaims. *See Gonzales v. Google, Inc.* (N.D. Cal. 2006) 234 F.R.D. 674, 680; *See also* Federal Rule of Civil Procedure 26(b).

Plaintiffs' subpoena to Boeing is unduly burdensome and not reasonably calculated to lead to admissible evidence for the following reasons: (1) it is facially overbroad and seeks information between Boeing and all of RBC's subsidiaries, which are not parties to the instant case; (2) it seeks all licensing agreements between All Power and Boeing, without providing a specific time frame or any substantive limitations; and (3) it seeks all private and privileged documents regarding the business affairs of RBC and Boeing that are not at issue in this action.

Such a transparent attempt to go beyond the scope of permissible discovery in this action should not be tolerated. By the mere fact that the Plaintiffs initiated this lawsuit, they are not given free rein to seek confidential and privileged documents that are clearly not reasonably calculated to lead to the discovery of admissible evidence. Nowhere is this more clear than here when Plaintiffs' intrusive and overbroad discovery serves no legitimate discovery purpose. Alternatively, RBC requests that the Court issue an Order modifying Plaintiffs' subpoena by narrowing the scope of documents sought to only those documents relevant to this matter.

1 **II. STATEMENT OF PERTINENT FACTS**

2 **A. Background Of The Case**

3 Plaintiffs filed the instant action against RBC on July 20, 2012, alleging a
 4 breach of contract cause of action arising from RBC's purported breach of two
 5 promissory notes with Plaintiffs Rankine and Stanton, respectively.

6 On September 4, 2012, RBC filed Counterclaims against Plaintiffs for breach
 7 of written contracts, intentional misrepresentation, negligent misrepresentation,
 8 common law fraud in connection with the sale and purchase of securities, breach of
 9 the implied covenant of good faith and fair dealing, contractual indemnity, equitable
 10 indemnity, rescission of contract and declaratory relief. RBC's Counterclaims arose
 11 from Plaintiff's breach of several provisions pertaining to intellectual property assets
 12 in the Stock Purchase Agreement (the "Agreement") entered into between Defendant
 13 and Plaintiffs¹. RBC alleged that former key employees of RBC and All Power
 14 Manufacturing Co. ("All Power") misappropriated confidential and proprietary trade
 15 secrets and intellectual property from All Power in and around the time of the
 16 Agreement. RBC alleged that the actions and knowledge of the key employees'
 17 misappropriation was imputed to Plaintiffs through the express provisions of the
 18 Agreement.

19 **B. Facts Pertinent To The Present Motion To Quash**

20 On or about June 13, 2013, Plaintiffs' served a third-party, Boeing, with a
 21 Subpoena to Produce Documents, Information, or Objects or To Permit Inspection of

23 ¹ RBC's Counterclaims arise from the Agreement entered into between RBC and the
 24 Plaintiffs, on or about September 11, 2006, for the purchase of the issued and
 25 outstanding shares of capital stock of All Power. [Doc. 42] The Agreement includes a
 26 series of representations and warranties made by Plaintiffs to RBC regarding, among
 27 other things, the assets and liabilities of All Power. Section 10.2 of the Agreement
 28 expressly states that Plaintiffs indemnify and hold RBC harmless for any liabilities,
 29 damages or expenses arising from any breach of a representation or warranty made by
 30 Plaintiffs.

1 Premises in a Civil Action. Subsequently, Plaintiffs' reissued a slightly modified
 2 version of the Subpoena to Produce Documents, Information, or Objects to Permit
 3 Inspection of Premises in a Civil Action (the "Subpoena") to Boeing. [Ventocilla
 4 Decl., ¶2, Ex. A] Plaintiffs left the production date as July 5, 2013 and the parties
 5 agreed to hold all objections to the Subpoena as timely. The Subpoena includes an
 6 attachment seeking the production of documents falling into six categories.

7 Requests Numbers 1 through 6 in the Subpoena seek licensing documents
 8 between Boeing and "RBC", which the Subpoena defines as referring to "RBC
 9 Bearings Incorporated and includes its subsidiary companies Roller Bearing
 10 Company of America, Inc., RBC Aircraft Products, Inc., All Power Manufacturing
 11 Company, Heim Bearings Company, Southwest Products, Inc., and Transport
 12 Dynamics." Only Roller Bearing Company of America, Inc. is a party to the instant
 13 action. [Ventocilla Decl., ¶3] The other companies included in the Subpoena's
 14 definition are separate entities that are not parties to this suit.

15 Requests Numbers 1 and 2 request all licensing agreements between Boeing
 16 and All Power, but do not provide a timeframe from which these documents are
 17 sought. [Ventocilla Decl., Ex. A]

18 Hoping to resolve this issue between counsel, Defense counsel contacted
 19 Plaintiffs' counsel on June 26, 2013 and July 2, 2013, to request that the subpoena be
 20 withdrawn. [Ventocilla Decl., ¶4-6] Plaintiffs' counsel rejected the request.
 21 [Ventocilla Decl., ¶4-6]

22 **III. THE COURT HAS DISCRETION TO QUASH A SUBPOENA TO A**
 23 **NON-PARTY PURSUANT TO FED. R. CIV. P. 45**

24 Contrary to Plaintiffs' apparent belief, they cannot go beyond the scope of
 25 permissible discovery in this action. As federal courts have repeatedly explained, the
 26 information sought by a subpoena must be "reasonably calculated to lead to
 27 admissible evidence." Fed. R. Civ. P. 26(b); *See Gonzales v. Google, Inc.* (N.D. Cal.
 28 2006) 234 F.R.D. 674, 680 (applied to subpoenas). In order to enforce these

1 limitations on discovery, Fed. R. Civ. P. 45(c)(3)(A) provides the basis for a court to
 2 quash a subpoena. Rule 45 states:

3 [o]n a timely motion, the court by which a subpoena was
 4 issued shall quash or modify the subpoena if it
 5 (i) fails to allow reasonable time for compliance;
 6 (ii) requires a person who is not a party...to travel to a place
 7 more than 100 miles from the place where that person
 8 resides, is employed or regularly transacts business..., or
 9 (iii) requires disclosures of privileged or other protected
 matter and no exception or waiver applies, or
 (iv) subjects a person to undue burden.

10 Under Rule 45(c)(3)(A), “[a]n evaluation of undue burden requires the court to
 11 weigh the burden to the subpoenaed party against the value of the information to the
 12 serving party.” *Travelers Indem. Co. v. Metropolitan Life Insur. Co.* (2005) 228
 13 F.R.D. 111, 113. In particular, Rule 45 requires the court to consider “such factors as
 14 relevance, the need of the party for the documents, the breadth of the document
 15 request, the time period covered by it, the particularity with which the documents are
 16 described and the burden imposed.” *Moon v. SCP Pool Corporation* (2005) 232
 17 F.R.D. 633, 637. Fed. R. Civ. P. 26(b)(1)² and subsection 26(b)(2), “generally
 18 preclude discovery of information that is not probative of the issues in a case either
 19 directly or indirectly.” *Davis v. Leal* (1999) 43 F.Supp.2d 1102, 1111. “Discovery
 20 that is not necessary or significant in an evidentiary sense, nor reasonably calculated
 21 to lead to significant evidence, is not permitted.” *Ibid.*

22 Plaintiffs’ Subpoena satisfies each of the factors the Court considers when
 23 determining the undue burden a subpoena imposes on a third party.

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28 ² Fed. R. Civ. P. 26(b)(1) permits discovery of information relevant to the subject
 matter of the lawsuit.

1 **IV. PLAINTIFFS' SUBPOENA MUST BE QUASHED BECAUSE IT IS**
 2 **UNDULY BURDENSOME**

3 **A. The Subpoena's Requests Nos. 1 Through 6 Are Overbroad**

4 Requests Nos. 1 through 6 are facially overbroad and unduly burdensome
 5 because they seek licensing documents between Boeing and *all* of RBC's subsidiaries
 6 - none of which are parties to this lawsuit.

7 As explained in *Moon v. SCP Pool Corporation* (C.D. Cal. 2005) 232 F.R.D.
 8 633, 637, the relevance of the documents sought and the breadth of the document
 9 request, are factors the Court weighs when determining the burden of a subpoena.
 10 Notably, in quashing the subpoena in *Moon*, the district court found that the requests
 11 were overbroad on their face because they sought the production of all purchasing
 12 information even though the contract dispute was limited to a specific geographic
 13 region. *Id.* at 637-638. Moreover, in seeking "commercial information" between non-
 14 parties, Boeing and RBC's subsidiaries, Plaintiffs are clearly seeking documents
 15 outside of the bounds of fair discovery. Fed. R. Civ. P. 45(c)(3)(B) (ground to quash
 16 subpoena if it seek "commercial information" of non-parties); *See also Moon, supra*,
 17 at 638.

18 Further, discovery that is not necessary or significant in an evidentiary sense is
 19 not permitted. *Davis v. Leal* (1999) 43 F.Supp.2d 1102, 1111. In *Leal*, the court held
 20 that while the party subject to discovery could not artificially delimit what was pled in
 21 the complaint in order to avoid discovery, it was true that the parties subject to the
 22 discovery "could not ignore what they had pled in the complaint...and were generally
 23 limited in discovery to what is pled in the complaint." *Id* at 1112.

24 Here, Requests Nos. 1 through 6 seek all licensing agreements between Boeing
 25 and seven subsidiaries of RBC, of which only one is a party to this case. As such, any
 26 licensing agreements between Boeing and RBC's non-party subsidiaries are beyond
 27 the scope of the issues in this case and wholly irrelevant.

28

1 **B. Requests Nos. 1 Through 2 Clearly Seek The Production Of**
 2 **Irrelevant Documents By Not Providing An Applicable Time Frame**

3 Here, Plaintiffs' Requests Nos. 1 through 2 are clearly overbroad because they
 4 fail to provide any time frame that limits the licensing agreements that must be
 5 produced by Boeing. Indeed, the Subpoena seeks "All licensing agreements between
 6 YOU and All Power Manufacturing Co. related to ..." [Ventocilla Decl., Ex. A] None
 7 of these specify the time period from which such documents are sought. Given All
 8 Power and RBC have a long history of doing business with Boeing, which predates
 9 the sale of All Power to RBC at issue in this action, the Subpoena demands the
 10 production of documents beyond the scope of the relevant issues.

11 As such, Plaintiffs are seeking the disclosure of highly sensitive and
 12 confidential business records that have no bearing on this case. Such a non-tailored
 13 attempt to obtain sensitive business records—with a total disregard for the
 14 permissible scope of civil discovery—cannot serve a legitimate discovery purpose.

15 **V. PLAINTIFFS' SUBPOENA MUST BE QUASHED BECAUSE IT**
 16 **SEEKS PRIVILEGED AND CONFIDENTIAL DOCUMENTS**

17 Highly private matters of non-parties, such as financial and business
 18 information, are ordinarily protected from discovery. Fed. R. Civ. P. 45(c)(3)(B)
 19 (ground to quash subpoena if it seek "commercial information" of non-parties); *See*
 20 *also Moon, supra*, at 638 ("a specific ground to quash a subpoena is that it seeks
 21 'commercial information[]'"). Nonetheless, Requests Nos. 1 through 6 seek
 22 privileged documents pertaining to RBC and its subsidiaries, which violate the
 23 general limits of discovery.

24 **A. Plaintiffs' Subpoena Seeks the Disclosure of Confidential and**
 25 **Privileged Information**

26 In *Davis v. Leal* (1999) 43 F.Supp.2d 1102, 1111, the Court stated that
 27 information and documents "which implicate private financial information are of the
 28 type that have been declared presumptively privileged." *Davis v. Leal* (1999) 43

1 F.Supp.2d 1102, 1111; *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d
 2 652, 657. The term financial privacy broadly encompasses "documents generated in
 3 one's business affairs, e.g., contracts, business records and the like that have not
 4 received widespread dissemination, or have not been publicly filed." *Ibid.*

5 Subpoena Requests Nos. 1 through 6 seek licensing agreements,
 6 correspondence and draft agreements (see Nos. 5 through 6) between Boeing and
 7 RBC, without any consideration for the financial privacy of Boeing, RBC, or its
 8 subsidiaries. The requests ignore the confidential business practices and records of
 9 RBC that are not at issue in this case. Further, each Request seeks documents
 10 generated in RBC's business affairs with Boeing, including correspondence and draft
 11 agreements that are protected by attorney client privilege and attorney work product.
 12 Such business records are beyond the scope of this action and privileged.

13 **VI. ALTERNATIVELY, RBC REQUESTS THE COURT MODIFY**
 14 **PLAINTIFFS' SUBPOENA**

15 Should the Court find that Plaintiffs' Subpoena is within the permissible scope
 16 of discovery, RBC requests that the Court order Plaintiffs' Subpoena be modified as
 17 follows:

- 18 • Limit the scope of documents sought in Requests 1 through 6 to only
 19 those documents relating to the parties in this action, specifically Roller
 20 Bearing Company of America, Inc. and not its subsidiaries;
- 21 • Limit Requests Nos. 1 through 2 to only seek the production of
 22 documents within the relevant time in this action - the date of the
 23 Agreement, September 11, 2006, to the present;
- 24 • Limit Requests Nos. 1 through 6 to exclude any and all documents
 25 protected by attorney-client privilege and attorney-work product, such as
 26 draft agreements and related documents.

1 **VII. PLAINTIFFS ARE SUBJECT TO SANCTIONS FOR UNDULY**
 2 **BURDENING BOEING AND RBC**

3 Fed. R. Civ. P. 45(c)(1) provides that a party responsible for issuing and
 4 serving a subpoena must take reasonable steps to avoid imposing undue burden or
 5 expense on a person subject to a subpoena. Rule 45(c)(1) provides the issuing court
 6 with the right to impose appropriate sanctions on a party who fails to comply with the
 7 limits on subpoenas.

8 Given that the Subpoena is facially overbroad, unduly burdensome and invades
 9 the confidential and privileged information of both Boeing and RBC's subsidiaries,
 10 RBC respectfully requests the Court sanction Plaintiffs in the amount of
 11 approximately \$2,575.00, the reasonable attorney's fees RBC incurred in bringing
 12 this motion to quash. [Ventocilla Decl., ¶¶7-8]

13 **VIII. CONCLUSION**

14 For the foregoing reasons, RBC respectfully requests that this Court grant its
 15 motion to quash Plaintiffs' subpoena to Boeing, or in the alternative, modify the
 16 subpoena.

17
 18 Dated: July 3, 2013

BOHM MATSEN, LLP

21 By: /s/ Annie Ventocilla

22 James G. Bohm
 23 Annie Ventocilla
 24 Nathan P. Bettenhausen
 25 Attorneys for Defendant
 ROLLER BEARING COMPANY OF
 AMERICA, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Costa Mesa, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 695 Town Center Drive, Suite 700, Costa Mesa, California 92626. On July 5, 2013, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: **DEFENDANT ROLLER BEARING COMPANY OF AMERICA, INC.'S
NOTICE OF MOTION AND MOTION TO QUASH, OR IN THE
ALTERNATIVE, FOR AN ORDER MODIFYING SUBPOENA; AND
MEMORANDUM OF POINTS AND AUTHORITIES**

SERVED UPON: **SEE ATTACHED SERVICE LIST**

(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Costa Mesa, California. I am readily familiar with the practice of the Law Offices of Bohm Matsen, LLP., for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY PERSONAL SERVICE) I caused the above-referenced documents to be personally delivered to the addresses listed on the attached Service List by close of business on _____

(BY ELECTRONIC FILING WITH THE U.S. DISTRICT COURT) By submitting said documents for Electronic Case Filing on said date pursuant to Local Rule at Bohm Matsen, LLP.

1

BY E-MAIL/ELECTRONIC TRANSMISSION) On _____, _____, at Costa Mesa, California, I served the above referenced document by electronic mail to the e-mail address of the Addressee(s) pursuant to Rule 2.260 of the California Rules of Court. The transmission was complete and without error and I did not receive, within reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

1

(BY FACSIMILE WHERE INDICATED) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error. Pursuant to C.R.C. 2009(l), I caused the transmitting facsimile machine to issue properly a transmission report, a copy of which is attached to this Declaration.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on July 5, 2013, at Costa Mesa, California.

A handwritten signature in black ink, appearing to read "John Doe".

Brittney Sanchez

Service List

Rankine v. Roller Bearing Company of America, Inc.
United States District Court, Southern District of California
Case No. 3:12-CV-02065-IEG-BLM

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